

## MINUTES OF THE REGULAR MEETING OF JUNE 12, 2014

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 12, 2014, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Michael Johnson, Mr. Rodney Smith, Mr. I.G. Burton III, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. C. Shane Abbott – Assistant Director.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of May 22, 2014 as circulated. Motion carried 5 – 0.

### OLD BUSINESS

#### **Subdivision #2014-1 – Charles H. Guy, IV**

Application of **CHARLES H. GUY, IV** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 41.59 acres into 83 lots, (Cluster Development) located south of Road 279A (Waterview Road), 530 feet east of Road 279 (Camp Arrowhead Road) ( Tax Map I.D. #2-34-12.00-part of 22.00)

The Commission discussed this application which has been deferred since May 8, 2014.

Mr. Smith stated that he would move that the Commission grant preliminary approval of Subdivision #2014 – 1 for Charles H. Guy, IV, based upon the record and for the following reasons:

1. The proposed cluster subdivision meets the purpose of the Subdivision Code in that it protects the orderly growth of the County. It also meets the requirements of the Subdivision Code, and the items listed in Section 99-9C of the Code have been favorably addressed.
2. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
3. The cluster subdivision is consistent with other developments in the area.
4. The proposed subdivision will not adversely impact schools, public buildings and community facilities, or area roadways and public transportation.
5. The proposed cluster subdivision is a design that is superior to a standard subdivision. As an example, 31% of the site will be open space and no wetlands will be disturbed. Although lot sizes could be reduced to 7,500 square feet the average lot size is between 10,000 and 11,000 square feet. The amenities of the cluster subdivision will also include sidewalks and a pool and a pool house.
6. The project will be served by Sussex County sewer and central water.

7. This application is, however, subject to the following conditions:
  - A. There shall be no more than 83 lots within the subdivision.
  - B. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, buffers, stormwater management facilities, and erosion and sedimentation control facilities, as well as the other common areas.
  - C. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
  - D. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.
  - E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
  - F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
  - G. A 20 foot buffer shall be shown along the boundaries of the Subdivision. The Final Site Plan shall contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation that are to be included in the buffer areas.
  - H. No wetlands shall be included within any lots.
  - I. Sidewalks shall be located on one side of all streets in this subdivision.
  - J. The subdivision shall be served by Sussex County sewer.
  - K. The developer shall construct all of the recreational amenities prior to the issuance of the 42<sup>nd</sup> Building Permit within this project.
  - L. This Preliminary Approval is contingent upon the applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. Staff shall approve this submitted revised Plan upon confirmation that the conditions of approval have been depicted or noted on it.
  - M. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve this application as a preliminary, for the reasons and with the conditions stated. Motion carried 5 – 0.

## PUBLIC HEARINGS

### **Conditional Use #1988 – Zhenguo Zhang**

Application of **ZHENGUO ZHANG** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a medical office center to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 2.3522 acres, more or less, land lying southwest of Route One (Coastal Highway) 1,000 feet northwest of Road 258 (Hudson Road) (911 Address – 14614 Coastal Highway, Lewes, Delaware) (Tax Map I.D. # 2-35-16.00-64.00).

Mr. Lank reminded the Commission that they had previously reviewed the property as Change of Zone No. 1740 to change from AR-1 to CR-1 on February 27, 2014; that on March 13, 2014 the Commission recommended that the application be denied with reasons, including that if the Applicant chooses to pursue a Conditional Use the application fee for doing so should be waived by the County; and that on March 25, 2014 the County Council denied Change of Zone No. 1740 based upon the Commission's recommendation.

The Commission found that on September 17, 2013 DelDOT provided comments on Change of Zone No. 1740 in the form of a letter and memorandum referencing that the Department recommends that this rezoning application be considered without a Traffic Impact Study and that the need for a Traffic Impact Study will be evaluated when a subdivision or land development plan is proposed; that the property owner can develop a rights-in / rights-out access to Delaware Route One for a site generating an average of 40 vehicle trips per day; and that the current Level of Service "E" of Route One will not change as a result of this application.

The Commission found that on May 28, 2014 the County Engineering Department Utility Planning Division provided comments in the form of a memorandum referencing that the site is not in a proposed or current County operated and maintained sanitary sewer and/or water district; that the site is located in the North Coastal Planning Area; that an on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed use is not in an area where the County has a schedule to provide sewer service at this time; and that a concept plan is not required.

The Commission found that on January 17, 2014 the Office of State Planning Coordination provided comments in the form of a letter referencing that the Applicant met with State agency planners on December 18, 2013 for a Preliminary Land Use Service (PLUS) meeting and that this letter provides comments on the Strategies for State Policies and Spending, and comments on Code Requirements and Agency Permitting Requirements from DelDOT, the Department of Natural Resources and Environmental Control, and referencing that the Applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the project design or not, and the reason therefore.

The Commission found that on June 6, 2014 the Sussex Conservation District provided comments in the form of a memorandum referencing that there are three (3) soil types on this parcel; that the Applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation after construction; that there are no storm flood hazard areas affected; that it is not likely that the project will necessitate any off-site drainage improvements; that it is possible that the project will necessitate on-site drainage improvements, and that there are no tax ditches affected.

The Commission found that Zhenguo Zhang was present on behalf of his application and stated in his presentation and in response to questions raised by the Commission that he is a licensed acupuncture practitioner and is applying to convert a dwelling into a medical office facility; that he may offer the facility for other medical office space; that he anticipates that business hours

would be sometime between 8:00 a.m. and 8:00 p.m. Monday through Saturday; that signage would not be lighted; that he does not anticipate any building expansions at this time; that he requests that the previous record for Change of Zone No. 1740 be a part of the record for this application; that the previous record included: that he needs an office in this area for his patients; that he purchased the property so that he can develop an office on the premises; that he may also offer massage therapy and chiropractic services; that he has offices in Dover and Lewes; that he will be open at this location three (3) times per week seeing approximately five (5) patients per day; and that other commercial zoning and uses exist in the immediate area.

The Commission found that there were no parties present in support of or in opposition to this application.

At the conclusion of the public hearings, the Commission discussed this application.

Mr. Burton stated that he would move that the Commission recommend approval of Conditional Use #1988 for Zhenguo Zhang for a medical office center based on the record made during the public hearing and for the following reasons:

- 1) This Applicant originally sought CR-1 zoning for this property, which was not appropriate. Instead, a Conditional Use, with conditions and limitations on the use is appropriate for this site.
- 2) A Conditional Use for a medical office center is a limited use that will not adversely affect neighboring properties, roadways, traffic, or community facilities.
- 3) The use as a medical office center has a public character that promotes the health, safety, welfare and general convenience of Sussex County and its residents.
- 4) This recommendation is subject to the following conditions:
  - A. The use shall be limited to medical office uses, which may include acupuncture, massage therapy, and chiropractic services, as suggested by the Applicant.
  - B. The use shall occur within the existing structures on the property. Any expansion of those structures shall require site plan approval by the Planning and Zoning Commission, and possibly a new Conditional Use application depending on the extent of any expansion.
  - C. One un-lighted sign, not to exceed 32 square feet per side, shall be permitted.
  - D. Hours of operation shall be between 8:00 a.m. to 8:00 p.m. Monday through Saturday.
  - E. The use shall comply with all Sussex County parking requirements. The required parking shall be shown on the Final Site Plan and shall be clearly marked on the site itself.
  - F. The Applicant shall comply with all DelDOT requirements.
  - G. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 5 – 0.

### **Change of Zone #1751 – Peninsula at Long Neck, LLC**

Application of **PENINSULA AT LONG NECK, LLC** – an Ordinance to modify Condition No. 10 (C) imposed on Ordinance No. 2180 for Change of Zone No. 1697, the application of Peninsula at Long Neck, LLC for “The Peninsula”, a MR-RPC Medium Density Residential District – Residential Planned Community, to extend the time to construct and open for use the golf clubhouse facility (911 Address – None Available) (Tax Map I.D. #2-34-30.00-1.00 and others).

Mr. Lank advised the Commission that the Applicants did not submit an Exhibit Booklet with the application, but did provide a comparison of the current Condition No. 10 C and the Applicants proposed amended Condition No. 10 C as follows: Current Condition: “Construction of the Clubhouse shall commence no later than three (3) years from the date the Sussex County Council approves Change of Zone No. 1697, with construction to be completed 12 months thereafter. A bond, cash bond, or letter of credit shall be provided to Sussex County in the amount of 125% of the cost of completion of the Clubhouse within sixty (60) days of the date that Sussex County Council approves Change of Zone No. 1697”; and Proposed Condition: “Construction of the Clubhouse shall commence no later than October 1, 2015, with construction to be completed 12 months thereafter. A bond, cash bond, or letter of credit shall be provided to Sussex County in the amount of 125% of the cost of construction of the Clubhouse within 60 days of the date that Sussex County Council approves Change of Zone No. 1697”; a copy of the Minutes of Sussex County Council meeting for March 22, 2011 approving Change of Zone No. 1697; a copy of Irrevocable Letter of Credit and Extension from Park Sterling Bank of Charlotte, North Carolina; and a copy of the Sheriff’s Deed to REDUS Peninsula Millsboro, L.L.C. (REDUS), a wholly owned subsidiary of Wells Fargo Bank (Wells Fargo) as recorded.

The Commission found that the County Engineering Department Utility Planning Division provided comments on May 28, 2014 in the form of a memorandum which references that the project is located in the Long Neck Sanitary Sewer District; that wastewater capacity is available for the project; that Ordinance 38 construction is not required; that the current System Connection Charge Rate is \$3,795.00 per EDU; that conformity to the North Coastal Planning Study will be required; that the proposal is to modify Condition No. 10 as set forth in C/Z #1697 by requesting an additional time extension for the commencement of the clubhouse; that the approval of a time extension would not have a significant impact on the sewer system and the Department does not object to the proposal; and that a concept plan is not required.

The Commission found that the Sussex Conservation District provided comments on June 9, 2014 in the form of a memorandum which references that there are three (3) soil types on the site location; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after construction; that no storm flood hazard areas are affected; that it may be possible that off-site drainage improvements will be necessary; that on-site drainage improvements will be necessary; and that no tax ditches are affected.

Mr. Lank advised the Commission that 602 mailings were sent out and that 18 mail returns have been received to date.

Mr. Lank added that the Department has received a note on one of the mailings stating that we need to hold off on the clubhouse until we see what the needs will be and until we have the resources to pay for it; and that if constructed now, the rise in dues would be prohibitive for some owners. The note was signed by Ronald Weiner.

Mr. Lank provided the Commission with comments and photographs from John Gee, Chairman of the Peninsula Homeowners Action Committee (PHAC) providing a short history of the actions taken about the proposed clubhouse; emphasizing that the new owner/developer individually, and not the club members, will own the clubhouse when it is finally built; and recommending that the Commission should recommend approval of the 18 month extension as requested by Wells Fargo and REDUS; that PHAC reserves the right to request that the Commission and the Sussex County Council condition such approval upon Wells Fargo and REDUS providing sufficient security to insure the construction of this long-overdue facility as was envisioned when this Master Planned Community was first authorized in the event that the PHAC are unable to reach a satisfactory agreement with Wells Fargo.

The Commission found that James Fuqua, Esquire, of Fuqua, Yori & Willard, P.A. was present with Daniel Bartoh of Wells Fargo and that they stated in their presentations and in response to questions raised by the Commission that the application was filed on behalf of Peninsula at Long Neck, LLC through Land Tech Receiver Services; that the property has been acquired and is owned by REDUS; that this application is only for a time extension for the construction of the clubhouse; that the project was originally approved for 1402 units in 2002; that the majority of the amenities have been completed, except for the clubhouse; that in 2010 a time extension was granted for the construction of the clubhouse; that the County Council in approving the time extension required in Condition of Approval No. B that “The Nature Center shall be constructed and open to use by September 30, 2011”; that the Nature Center has been completed; that the County Council also required in Condition of Approval No. C that “Construction of the Clubhouse shall commence no later than three (3) years from the date Sussex County Council approves Change of Zone No. 1697, with construction to be completed 12 months thereafter. A bond, cash bond, or letter of credit shall be provided to Sussex County in the amount of 125% of the cost of completion of the Clubhouse within sixty (60) days of the date that Sussex County Council approves Change of Zone No. 1697”; that a bond for \$1,375,000.00 was provided; that construction of the Clubhouse has not yet been started; that they are requesting that a time extension be granted so that they can start construction no later than October 1, 2015 with completion of the construction within one (1) year; that REDUS is actively searching for a purchaser for the project; that the purchaser will be well aware that they must build the Clubhouse; that the owners (residents) are supportive of the application; that the existing facilities on the site are currently adequate to serve the existing residents; that the requested start date for construction in the requested time extension is appropriately scheduled in October after the summer golf season; that they are requesting an extension to the previously approved time extension; that one of the financial securities is the bonding of 125% of the construction cost

currently being held by the County; that if the time extension is not granted, the County Council could call the bond and proceed with the construction of the Clubhouse; that REDUS and Wells Fargo are not developers; that the purchaser will have to work with the residents of the project to determine the needs of the community for the Clubhouse; that the \$1,375,000.00 bonding was based on an estimate on the size of the previous footprint for the Clubhouse; that REDUS has owned the property since May 2, 2014; and that the lender and the residents agree that the new developer shall build the Clubhouse.

Mr. Robertson stated that the County will guarantee the construction by holding the bonding.

The Commission found that John Gee, Chairman of the Peninsula Homeowners Action Committee (PHAC) was present on behalf of PHAC and stated that there are over 600 homeowners currently in the project; that over 400 homeowners are members of PHAC, which is a 50% increase in the number of owners since the last requested time extension; that PHAC has been working actively with Wells Fargo and that their sense is that they will be able to reach a solution that will satisfy the homeowner's concerns regarding the Clubhouse; that a majority of the homeowners have waited 6 to 8 years for this construction to begin; that collectively, the homeowners have invested well over a quarter of a billion dollars (more than \$250,000,000) in their homes in this community; that the value of their properties has been depreciated by the repeated failure of the original developers and the Receiver to comply with County Ordinances and amendments, by refusing to timely build the centerpiece of the community, a large gathering place with great vistas and top-grade amenities; that if this extension is approved the homeowners are entitled to be assured that when the Clubhouse is built by the new owner/developer it will be substantial, of high quality, and commensurate with the value of the homes already built and to be built; that it must be emphasized that the new owner/developer individual, and not the club members, will own the clubhouse when it is finally built; that the Commission should recommend approval of the 18 month extension as requested by Wells Fargo and REDUS; that the homeowners reserve the right to request that the Commission and the Sussex County Council condition such approval upon Wells Fargo and REDUS providing sufficient security to insure the construction of this long-overdue facility as was envisioned when this Master Planned Community was first authorized in the event that the homeowners are unable to reach a satisfactory agreement with Wells Fargo and REDUS; that the homeowners have met many times with Wells Fargo and support this proposal; that Dennis Silicato, a member of this Committee, also agrees; that all members are finally aware of the Boards support; that a clubhouse designer has estimated that the cost of construction should equal \$12,000,000; that the Board feels that the estimate should market at between \$5,000,000 and \$12,000,000 for a 25,000 to 38,000 square foot facility.

The Commission found that John Shanaphy, a homeowner, agreed with Mr. Gee's comments and added that some of the homeowners are concerned about the dues increasing.

The Commission found that Mr. Fuqua added that the Declaration of Restrictions provides for the creation of a Homeowners Association; that the Homeowners Association is currently controlled by Wells Fargo; and that the PHAC is an independent committee of the homeowners.

The Commission found that Daniel Bartoh of Wells Fargo added that there is no prohibition on Wells Fargo financing the future developer; that there is currently approximately \$3,000,000 in escrow for the construction of the clubhouse established and based on property sales deposits; and that they hope to have a contract to sell the property by the end of 2014.

The Commission found that Mr. Fuqua added that the official Homeowners Association agrees with this time extension request.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

### **Change of Zone #1753 – Cadbury at Lewes, Inc.**

Application of **CADBURY AT LEWES, INC.** to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 5.0 acres, more or less, land lying northeast of Road 267 (Gills Neck Road) 1,100 feet east of Road 268 (Kings Highway) (911 Address: 17028 Cadbury Circle, Lewes, Delaware) (Tax Map I.D. 3-35-8.00-37.00 (Part of)).

Mr. Lank reminded the Commission that they had previously been provided with copies of an Exhibit Booklet, copies of the Revised Site Plan, PLUS response comments, comments on the 99-9C requirements, copies of an Environmental Assessment and Public Facilities Evaluation Report, and Technical Advisory Committee comments.

The Commission found that the Sussex Conservation District provided comments on June 9, 2014 in the form of a memorandum which references that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that there are no storm flood hazard areas affected; that the project will likely necessitate off-site drainage improvements; that the project will necessitate on-site drainage improvements; and that no tax ditches are affected.

Mr. Lank advised the Commission that on June 10, 2014 the Applicants provided suggested proposed Findings of Fact and proposed Conditions of Approval for consideration. Copies of the suggested Findings of Fact and proposed Conditions of Approval were provided to the Commission.

Mr. Lank provided the Commission with a copy of Ordinance No. 1679 for Change of Zone No. 1528, the original application filed on behalf of Cadbury Senior Services, Inc.

The Commission found that Carol Holden, representing Cadbury at Lewes, Inc., was present with Robert Gibbs, Esquire, of Morris, James, Wilson, Halbrook & Bayard, LLP, and Ring Lardner, Professional Engineer, of Davis, Bowen & Friedel, Inc., and that they stated in their presentations and in response to questions raised by the Commission that the site is located just off Gills Neck Road to the rear of the existing Cadbury project; that the parcel contains 5.0 acres



and is being purchased from the Mitchell property for expansion of the existing assisted/independent living project; that the project is currently at 88% capacity; that they are proposing 29 additional apartment type units on this site and three (3) units within the existing project; that the current project includes independent cottages, apartments, assisted living quarters, and nursing/rehabilitation facilities; that this proposal is intended to be an expansion, not a separate application site; that the site is located in a Level 1 Area according to the 2010 State Strategies Map; that the site is located in a Low Density Residential Area within the Environmentally Sensitive Developing Area according to the 2008 Comprehensive Land Use Plan Update; that proposed parking lots are located between buildings; that sidewalks are proposed to connect the buildings to one another and the parking lots; that a maintenance shed is also proposed with this expansion; that the project was presented to PLUS on April 23, 2014 and comments were received from the Office of State Planning Coordination on May 21, 2014; that the site does not contain any wetlands and is not within a flood area; that the expansion will relocate the 30 foot buffer from its current location to the perimeter of this site; that there are no historic or cultural resources listed on this parcel; that DelDOT did not require a Traffic Impact Study; that the project will use the existing roadways to serve the expansion; that drinking water and fire protection will be provided by Tidewater Utilities, Inc.; that the project will be served by County sewer service; that stormwater management will meet or exceed all State, County, and Sussex Conservation requirements and be maintained utilizing Best Management Practices; that the project will comply with all requirements of the Subdivision Ordinance Section 99-9C; that a small portion of the parcel is within a groundwater recharge area and that a wet pond will not be located within this area; and that there are no commercial uses intended.

The Commission found that there were no parties present in support of or in opposition to this application.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

#### OTHER BUSINESS

David Smith

Lot & 50' Easement – Road 34

Mr. Abbott advised the Commission that this is a request to create a 2.0 acre, more or less, lot with access off of an existing easement; that the owner is proposing to extend the easement and widen it to 50 feet in width across his property and create the 2.0 acre lot for his son; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the request. Motion carried 5 – 0.

Diane Koch

Lot & 50' Easement – Road 298A

Mr. Abbott advised the Commission that this is a request to create a 0.82 acre lot with an existing dwelling located on it out of a 35.14 acre tract with access from an existing 50 foot easement known as Green Road; that this would be the sixth lot created out of this parcel; that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to grant approval of the request with the condition that any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

Robert M. Warren

2 Parcels & 50' Easement – Road 579

Mr. Abbott advised the Commission that this is a request to create a 3.40 acre parcel out of a 116.179 acre tract; that the owner is proposing to create the easement over an existing farm lane to serve as access to the residual 112.779 acres; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the request. Motion carried 5 – 0.

Meeting adjourned at 8:12 p.m.